

## **REMARKS**

Upon entry of this amendment, Claims 1, 3-5, 19-34, and 37-40 are pending in the present application. Among them, Claims 3, 28, and 29 are directed to non-elected species, and are withdrawn from further consideration. Claim 1 is re-written to be co-extensive to the scope of former Claim 41. As a result, Claim 41 and dependent Claims 14-17 are canceled. Applicants reserve the right to prosecute claims identical or similar in scope to former Claim 1 and the canceled claims.

Applicants note that former Claim 41 is only subject to the obviousness type provisional double patenting rejection.

Applicants respectfully request reconsideration in view of the following remarks. Issues raised by the Examiner will be addressed below in the order they appear in the Office Action.

### *Claim Rejections under 35 U.S.C. § 103(a)*

The Office Action maintains the rejection to Claims 1, 4, 14, 19-27, 30, 33, 34, 37, and 38 under 35 U.S.C. § 103(a) as allegedly being obvious over Davis (*supra*) in view of Bhatia *et al.* (*Intl. J. Cancer* 2000, 85, 571-577) and Whitcomb (of record).

Claim 5 is rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Davis (of record) in view of Bhatia (of record) and Whitcomb (of record), further in view of Dolinar *et al.* (*Food technol and biotech.* 2000, 38, 5-9).

Claims 15-17 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Davis (of record) in view of Bhatia (of record) and Whitcomb (of record), further in view of Guo (or record).

Although Applicants respectfully disagree with the arguments in the Office Action concerning the above obviousness rejections, Applicants have amended Claim 1 to become identical to former Claim 41, thereby rendering the rejection to former Claim 1 moot.

Applicants submit that this amendment is essentially equivalent to canceling Claim 1 and amending certain dependent claims of former Claim 1 to become dependent claims of former

Claim 41. Since Claim 41 is only subject to the provisional double patenting rejection, all pending claims are allowable if the provisional double patenting rejection is overcome.

Reconsideration and withdrawal of the obviousness rejection to Claim 41 and its dependent claims are respectfully requested.

*Provisional Double Patenting Rejection*

Provisional double patenting rejection to Claims 1, 4-5, 14-17, 19-27, 30-34, and 37-41, over claims 1, 4-25, and 30-41 of the co-pending Application No. 10/792,498, is maintained.

Provisional double patenting rejection to Claims 1, 4-5, 14-17, 19-27, 30-34, and 37-41, over Claims 1, 4-38, 40-46, 52-60, 66-104, and 107-134 of the co-pending Application No. 10/650,592, is maintained.

The Office Action states that the provisional double patenting rejections may be withdrawn when all claims are otherwise allowable if the co-pending applications are not allowed.

Pursuant to MPEP 804, Sec. I(B)(1), "[i]f a 'provisional' nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer." Since the instant application is the earlier filed application with respect to the co-pending 10/792,498 application, provisional double patenting over the later filed 10/792,498 application should be withdrawn without the need to file a Terminal Disclaimer in the instant application.

With respect to the co-pending 10/650,592 application, which is filed on the same day of the instant application, Applicants submit that the provisional double patenting rejection should be withdrawn in view of the claim amendment, because the pending claims would not be obvious in view of the claims of the 10/650,592 application. Specifically, there is no teaching or suggestion about the claimed feature - "immunoglobulin fusion complex" - in either the art cited by the Examiner or the claims of the co-pending 10/650,592 application. Therefore, a *prima*

Application No. 10/650,591  
Amendment dated April 17, 2009  
Reply to Office Action of January 26, 2009

Docket No.: COTH-P02-001

*facie* case of obviousness cannot be established to sustain the provisional double patenting rejection over the co-pending 10/650,592 application. Reconsideration and withdrawal of the provisional double patenting rejection are respectfully requested.

## CONCLUSION

Applicants submit that the application is in condition for allowance.

The Examiner may address any questions raised by this submission to the undersigned at 617-951-7000. The Director is hereby authorized to charge any other deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. **18-1945**, from which the undersigned is authorized to draw under Order No. **COTH-P02-001**.

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Respectfully submitted,

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